

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9071 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KALUBHAI JIVABHAI HARIJAN

Versus

GOVT OF GUJARAT

Appearance:

MR BIPIN I MEHTA for Petitioner

MR DA BAMBHANIA for Respondent No. 1, 2 & 4

MR BN PATEL for Respondent No. 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 31/07/96

ORAL JUDGEMENT

The petitioner who had served as Safai Kamdar in the Halol Nagar Panchayat and retired on 31.5.1987 has filed this petition against the successor municipality seeking a direction on it to give all the retirement benefits to the petitioner including pension with effect from the date of his retirement.

According to the petitioner, he was a permanent employee of the erstwhile Halol Nagar Panchayat since 1944 till he retired on 31.5.1987 and that he had put in 42 years service. The said panchayat was converted into Nagar Palika in the year 1994 and therefore the respondent Nagar Palika as a successor will be bound by the obligations of the earlier local body. According to the petitioner in similar cases this court had made order on 3.2.1995 allowing the petitions. The petitioner has relied on a certificate issued by the Chief Officer on 8.9.1995 stating that the petitioner was an employee of the erstwhile Nagar Panchayat and had retired on attaining the age of superannuation on 31.5.1987.

The respondent Municipality has disputed the assertion of the petitioner that he had put in 42 years of service as Safai Kamdar though it has admitted the fact that he was an employee of the panchayat who had retired on superannuation on 31.5.1987. Admittedly, the petitioner was pursuant to the order of the Labour Court paid Rs. 7,800/- as gratuity by the respondent municipality on 18.12.1992. The respondent municipality has not placed on record any material for disputing the petitioner's assertion of having put in 42 years of qualifying service for being entitled to pension. The service record of the petitioner was in the custody of his employer and it was for the respondent municipality as a successor of the petitioner's employer to have traced out and produced the record if it wanted to dispute the petitioner's assertion. Merely because the petitioner had not claimed his pension earlier, it cannot be inferred that he had not put in the qualifying pensionable service. In similar petitions being Special Civil Applications Nos. 7750 of 1994 and 7752 of 1994 passed against the same municipality Hon'ble Mr. Justice Rajesh Balia by his common judgement and order dated February 3, 1995 directed the municipality to pay to the employees minimum amount of pension payable according to the cadre in which they were working with effect from 1.3.1995. That amount was subject to deduction out of the amount which was required to be calculated on the basis of the direction given to the respondent to pay pension and gratuity and other retirement benefits.

In the present case, gratuity is already paid and the claim is confined to pension only but it does appear that the petitioner had put in pensionable service and therefore he was entitled to get pension in accordance with the provisions of the Gujarat Panchayat Service (Servant Pension) Rules, 1976 and the other relevant Rules. It is accordingly directed that the respondent municipality should work out the pension payable to the petitioner and make the payment of the arrears of pension

with interest at the rate of 12 per cent per annum from the date on which it became due to the petitioner till payment and continue to pay to the petitioner the pension in accordance with law. The respondents will ensure that the pension is paid to the petitioner expeditiously preferably within two months from today. Rule is made absolute accordingly with no order as to costs.

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